

109TH CONGRESS
1ST SESSION

H. R. 3617

To amend part B of title XVIII of the Social Security Act to provide for value-based purchasing in the payment for physicians' services under the Medicare Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. BEAUPREZ, Mr. BOUSTANY, Mr. BURGESS, Mr. CAMP, Mr. ENGLISH of Pennsylvania, Mr. GINGREY, Mr. SAM JOHNSON of Texas, Mr. LEWIS of Kentucky, Mr. NEY, Mr. RAMSTAD, Mr. SHAW, Mr. SHAYS, Mr. UPTON, Mr. WELDON of Florida, and Mrs. KELLY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend part B of title XVIII of the Social Security Act to provide for value-based purchasing in the payment for physicians' services under the Medicare Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Medicare Value-Based
5 Purchasing for Physicians' Services Act of 2005".

1 **SEC. 2. VALUE-BASED PURCHASING FOR MEDICARE PHYSI-**
2 **CIA NS' SERVICES.**

3 (a) LINK OF VALUE-BASED PURCHASING TO PAY-
4 MENT FOR SERVICES.—Subsection (d) of section 1848 of
5 the Social Security Act (42 U.S.C. 1395w–4) is amend-
6 ed—

7 (1) in paragraph (1)(A), by inserting “and be-
8 fore 2006” after “beginning with 2001”;

9 (2) in paragraph (1)(A), by inserting before the
10 period at the end the following: “, and for years be-
11 ginning with 2006, multiplied by the update estab-
12 lished under paragraph (6) or a succeeding para-
13 graph, as is applicable to the year involved”;

14 (3) by adding at the end the following new
15 paragraphs:

16 “(6) UPDATE FOR 2006.—The update to the
17 single conversion factor established in paragraph
18 (1)(C) for 2006 shall be 1.5 percent.

19 “(7) UPDATE FOR 2007 AND 2008.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graphs (B) and (C), the update to the single
22 conversion factor established in paragraph
23 (1)(C) for 2007 and 2008 shall be the percent-
24 age increase in the MEI (as defined in section
25 1842(i)(3)) for the year involved minus 1 per-
26 centage point.

1 “(B) INCREASE FOR SUBMITTING INFOR-
2 MATION.—In the case of physicians’ services
3 furnished by a billing unit under this part that
4 is a new billing unit (as defined by the Sec-
5 retary) or that complies with the requirement of
6 subsection (k)(4) for the submission of informa-
7 tion for 2007 or 2008, the update to the single
8 conversion factor established in paragraph
9 (1)(C) for the year shall be the percentage in-
10 crease in the MEI (as defined in section
11 1842(i)(3)) for the year involved.

12 “(C) TREATMENT.—In computing the sin-
13 gle conversion factor under paragraph (1)(C)—

14 “(i) for 2008, the update for 2007
15 shall be treated as the update described in
16 subparagraph (B); or

17 “(ii) for 2009 or a succeeding year,
18 the updates for 2007 and 2008 shall be
19 treated as the updates described in sub-
20 paragraph (B).

21 “(8) UPDATE FOR 2009 AND SUCCEEDING
22 YEARS.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graphs (B) and (C), the update to the single
25 conversion factor established in paragraph

(1)(C) for 2009 and each succeeding year shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved minus 1 percentage point.

“(B) INCREASE FOR SUBMITTING INFORMATION AND MEETING QUALITY AND EFFICIENCY STANDARDS.—In the case of physicians’ services furnished by a billing unit under this part that is a new billing unit (as defined for purposes of paragraph (7)(B)) or that both complies with the requirement of subsection (k)(4) for the submission of information for a year (beginning with 2009) and meets (or is deemed to meet) performance objectives applicable to the billing unit for the year under subsection (k)(5), the update to the single conversion factor established in paragraph (1)(C) for the year shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved.

“(C) TREATMENT.—In computing the single conversion factor under paragraph (1)(C) for 2010 or a succeeding year, the updates for each preceding year (beginning with 2009) shall

1 be treated as the update described in subpara-
2 graph (B).”.

3 (b) ESTABLISHMENT OF VALUE-BASED PURCHASING
4 PROGRAM.—Section 1848 of such Act is further amended
5 by adding at the end the following new subsection:

6 “(k) VALUE-BASED PURCHASING PROGRAM.—

7 “(1) SELECTION OF QUALITY AND EFFICIENCY
8 MEASURES (Q & E MEASURES).—

9 “(A) IN GENERAL.—As part of the rule-
10 making process for payments under this section
11 for 2007, the Secretary shall provide for the se-
12 lection of quality measures and efficiency meas-
13 ures (in this subsection referred to as ‘Q-meas-
14 ures’ and ‘E-measures’, respectively, or as ‘Q &
15 E measures’ collectively) consistent with and in
16 accordance with this paragraph and paragraph
17 (2).

18 “(B) LEVEL OF MEASUREMENT.—Q-meas-
19 ures and E-measures shall be measures that
20 provide for assessment of quality and efficiency,
21 respectively, in the provision of services to indi-
22 viduals enrolled under this part at the level of
23 a billing unit under this part.

1 “(C) CHARACTERISTICS OF MEASURES.—

2 To the extent feasible and practicable, Q & E
3 measures shall—

4 “(i) include a mixture of outcome
5 measures, process measures (such as fur-
6 nishing a service), and structural measures
7 (such as the use of health information
8 technology for submission of measures);

9 “(ii) include efficiency measures re-
10 lated to clinical care (such as overuse, mis-
11 use, or underuse);

12 “(iii) include measures of care fur-
13 nished to frail individuals over the age of
14 75 and to individuals with multiple com-
15 plex chronic conditions;

16 “(iv) be evidence-based, if pertaining
17 to clinical care;

18 “(v) be consistent, valid, practicable,
19 and not overly burdensome to collect;

20 “(vi) be relevant to physicians and
21 other practitioners, individuals enrolled
22 under this part, and the Federal Supple-
23 mentary Medical Insurance Trust Fund;

24 “(vii) include measures that, taken as
25 a whole, provide a balanced measure of

1 performance of a billing unit under this
2 part;

3 “(viii) include measures that capture
4 individuals’ assessment of clinical care pro-
5 vided; and

6 “(ix) include measures that assess the
7 relative use of resources, services, or ex-
8 penditures.

9 “(D) FAIRNESS.—To the extent feasible
10 and practicable, this subsection shall be imple-
11 mented in a manner that—

12 “(i) takes into account differences in
13 individual health status;

14 “(ii) takes into account individual’s
15 compliance with orders;

16 “(iii) does not directly or indirectly
17 encourage patient selection or de-selection
18 by billing units under this part;

19 “(iv) reduces health disparities across
20 groups and areas; and

21 “(v) uses appropriate statistical tech-
22 niques to ensure valid results.

23 “(E) APPLICATION TO NON-PHYSICIAN
24 PRACTITIONERS AND OTHER SUPPLIERS FOR
25 WHICH PAYMENT IS MADE UNDER OR IN RELA-

TION TO PHYSICIAN FEE SCHEDULE.—Insofar as physicians’ services under this section are furnished by non-physician practitioner or a supplier other than a physician—

“(i) any reference in this subsection to a physician shall be a reference to such practitioner or supplier; and

“(ii) any reference to a physician specialty organization is deemed a reference to a specialty organization representing the speciality of such practitioners or suppliers.

“(2) SELECTION PROCESS FOR MEASURES.—

“(A) SUBMISSION OF PROPOSED MEASURES TO CONSENSUS-BUILDING ORGANIZATION.—

“(i) BY PHYSICIAN SPECIALTY ORGANIZATIONS.—The Secretary shall request each physician specialty organization to submit to the consensus-building organization by March 1, 2006, proposed Q & E measures described in clauses (i) through (vii) of paragraph (1)(C) that would be applicable to clinical care that billing units under this part practicing in the specialty

1 provide to individuals enrolled under this
2 part.

3 “(ii) BY SECRETARY.—If the physi-
4 cian specialty organization for a physician
5 specialty has not submitted proposed Q &
6 E measures under clause (i) by March 1,
7 2006, the Secretary shall submit, as soon
8 as possible but not later than April 1,
9 2006, proposed Q & E measures described
10 in clauses (i) through (vii) of paragraph
11 (1)(C) for such specialty to the consensus-
12 building organization.

13 “(iii) CONSENSUS-BUILDING ORGANI-
14 ZATION DEFINED.—For purposes of this
15 paragraph, the term ‘consensus-building
16 organization’ means an organization, such
17 as the National Quality Forum, that the
18 Secretary identifies as—

19 “(I) having experience in using a
20 process (such as the process described
21 in OMB circular A–119 published in
22 the Federal Register on February 10,
23 1998) for reaching a group consensus
24 with respect to measures, such as Q &
25 E measures, relating to performance

1 of those providing health care serv-
2 ices; and

3 “(II) including in such process
4 representatives of the Secretary, prac-
5 ticing physicians (and, as provided
6 under paragraph (1)(E), practicing
7 non-physician practitioners and other
8 suppliers), practitioners with experi-
9 ence in the care of the frail elderly
10 and individuals with multiple complex
11 chronic conditions, organizations and
12 individuals representative of the spe-
13 cialty involved, individuals enrolled
14 under this part, experts in health care
15 quality and efficiency, and individuals
16 with experience in the delivery of
17 health care in urban, rural, and fron-
18 tier areas and to underserved popu-
19 lations.

20 “(B) RECOMMENDATIONS BY CONSENSUS-
21 BUILDING ORGANIZATION.—The consensus-
22 building organization that receives proposed
23 measures under subparagraph (A) is requested
24 to submit to the Secretary by July 1, 2006, rec-
25 ommendations respecting the Q & E measures

described in clauses (i) through (vii) of paragraph (1)(C) to be implemented under this subsection.

“(C) SECRETARIAL SELECTION.—The Secretary shall select Q & E measures described in paragraph (1)(C) for purposes of this subsection consistent with the following:

“(i) USE OF RECOMMENDATIONS FOR CLINICAL CARE MEASURES SUBMITTED BY CERTAIN ORGANIZATIONS.—Except as provided in clause (ii), the Secretary shall not select a Q & E measure described in clauses (i) through (vii) of paragraph (1)(C) and relating to clinical care unless that measure has been submitted by a physician specialty organization (or through a physician-consensus building process, such as the Physician Consortium for Performance Improvement) and recommended by the consensus-building organization under subparagraph (B).

“(ii) PROVISION BY REGULATION.—The Secretary may by regulation select—

“(I) Q & E measures described in clauses (i) through (vii) of paragraph

1 (1)(C) and relating to clinical care
2 that do not meet the requirements of
3 clause (i) only if the Secretary deter-
4 mines that there were no, or insuffi-
5 cient, recommendations regarding
6 such Q & E measures under such
7 clause; and

8 “(II) Q & E measures described
9 in clause (viii) or (ix) of paragraph
10 (1)(C) and Q & E measures described
11 in clause (i) through (vii) of such
12 paragraph that do not relate to clin-
13 ical care.

14 “(D) PERIODIC REVISION OF SELEC-
15 TION.—The Secretary shall provide for the peri-
16 odic revision and selection of Q & E measures
17 consistent with the provisions of this paragraph
18 and paragraph (1) and the application of such
19 revised Q & E measures on a prospective basis
20 for a following year.

21 “(3) RATINGS OF PHYSICIANS BASED ON MEAS-
22 URES.—

23 “(A) RATINGS AND IDENTIFICATION OF
24 QUALITY PERFORMANCE.—

1 “(i) IN GENERAL.—The Secretary
2 shall determine a single rating of each bill-
3 ing unit under this part based on Q & E
4 measures selected under paragraph (2) and
5 information reported under paragraph (4).
6 Such a rating shall be determined for a
7 billing unit based on its performance on Q
8 & E measures relative to the performance
9 of its peers.

10 “(ii) NO DIRECT DISCLOSURE OF RAT-
11 ING.—Subject to subparagraph (B), the
12 Secretary shall not make such ratings of
13 identifiable billing units under this part
14 available other than to the respective unit.

15 “(iii) IMPROVEMENT AND PERFORM-
16 ANCE THRESHOLDS.—For specification of
17 improvement and performance thresholds,
18 see paragraph (5)(D).

19 “(B) DISCLOSURE OF PERFORMANCE IN
20 RELATION TO PERFORMANCE THRESHOLDS.—

21 “(i) IN GENERAL.—Subject to the
22 succeeding provisions of this subparagraph,
23 each year the Secretary shall make widely
24 available to the public the following infor-

1 mation regarding a billing unit’s perform-
2 ance on the Q & E measures:

3 “(I) Whether the unit was a new
4 billing unit or otherwise had insuffi-
5 cient data to provide for a measure-
6 ment of whether it met the perform-
7 ance objectives under paragraph
8 (5)(C).

9 “(II) For any other unit, whether
10 the unit met the performance objec-
11 tives under such paragraph.

12 “(ii) LIMITATION DURING FIRST 2
13 YEARS.—During 2007 and 2008, the Sec-
14 retary shall not make the information
15 under clause (i) with respect to an identifi-
16 able billing unit available other than to the
17 respective unit.

18 “(iii) PHYSICIAN NOTIFICATION AND
19 OPPORTUNITY FOR COMMENT OR AP-
20 PEAL.—Before making information under
21 clause (i) available with respect to a billing
22 unit under this part for years beginning
23 with 2009, the Secretary shall notify the
24 unit of the performance on Q & E meas-
25 ures (including information on the unit’s

1 performance in relation to performance ob-
2 jectives and aggregate information regard-
3 ing the performance of peers) and provide
4 the opportunity for the unit to provide
5 written comments regarding the unit's per-
6 formance. The Secretary shall respond in
7 writing to the comments and seek to reach
8 agreement on the unit's performance and
9 shall establish a formal appeals process in
10 the event of continued disagreement con-
11 cerning such performance. Upon conclusion
12 of the appeals process, if the unit provides
13 comments relating directly to the final de-
14 termination under clause (i) respecting
15 such performance, the Secretary shall dis-
16 close such comments with the disclosure of
17 the information under such clause.

18 “(iv) APPLICATION OF HIPAA PRIVACY
19 RULES.—Nothing in this subparagraph
20 shall be construed as changing or affecting
21 the application of rules promulgated under
22 section 264(c) of the Health Insurance
23 Portability and Accountability Act of 1996.

24 “(C) PEERS DEFINED.—For purposes of
25 this subsection, the term ‘peers’ means, with re-

1 spect to a billing unit under this part that prac-
2 tices in a specialty in an MA region (as estab-
3 lished under section 1858(a)(2)), other billing
4 units under this part that practice in the same
5 specialty in the same region, or, beginning with
6 the update for 2012, or in the United States.

7 “(4) REPORTING ON PERFORMANCE BEGINNING
8 WITH 2007.—For purposes of, and in order to be
9 provided a higher update under, subsection (d)(7)
10 beginning with 2007, each billing unit under this
11 part may submit information on performance on the
12 Q & E measures selected under this subsection with
13 respect to individuals enrolled under this part. Such
14 information shall be submitted in a form and man-
15 ner and time specified by the Secretary, which may
16 include submission as part of claims data under this
17 part. The Secretary shall provide a process for au-
18 diting the accuracy of the information submitted
19 under this paragraph.

20 “(5) INCENTIVES BASED ON PERFORMANCE BE-
21 GINNING WITH 2009.—

22 “(A) IN GENERAL.—For purposes of, and
23 in order to be provided an increased update
24 under, subsection (d)(7) for 2009 and each sub-
25 sequent year and for purposes of disclosure

1 under paragraph (3)(B), the Secretary shall es-
2 tablish quality and efficiency performance ob-
3 jectives for billing units under this part.

4 “(B) INCREASED UPDATE.—For purposes
5 of subsection (d)(7), such a billing unit is con-
6 sidered to meet performance objectives for a
7 year if, based on ratings under paragraph (3)—

8 “(i) the unit has demonstrated clear
9 improvement (as determined in accordance
10 with improvement standards specified by
11 the Secretary under subparagraph (D)) in
12 performance from its performance in the
13 previous year; or

14 “(ii) the unit’s performance meets or
15 exceeds the performance thresholds speci-
16 fied by the Secretary under subparagraph
17 (D).

18 “(C) DISCLOSURE.—For purposes of para-
19 graph (3)(B), such a billing unit is considered
20 to meet performance objectives for a year if,
21 based on the unit’s rating under paragraph
22 (3)(A), the unit’s performance meets or exceeds
23 the performance thresholds specified by the
24 Secretary under subparagraph (D).

1 “(D) IMPROVEMENT STANDARDS AND PER-
2 FORMANCE THRESHOLDS.—The Secretary shall
3 specify improvement standards under subpara-
4 graph (B)(i) and the performance thresholds
5 under subparagraphs (B)(ii) and (C) before the
6 beginning of the year involved.

7 “(E) TREATMENT OF CASES OF INSUFFI-
8 CIENT INFORMATION.—A billing unit is deemed
9 to meet performance objectives under subpara-
10 graphs (B) and (C) if the unit complied with
11 the reporting requirement under paragraph (4)
12 but there was insufficient information, as deter-
13 mined by the Secretary, to provide a valid
14 measure of performance.

15 “(6) REVIEW OF ADDITIONAL EXPENSES.—Not
16 later than May 1, 2008, and after consultation with
17 the medical community, the Secretary shall review,
18 and report to Congress on, the extent to which bill-
19 ing unit compliance with the reporting provisions of
20 paragraph (4) results in increased work and practice
21 expenses to billing units.

22 “(7) PHYSICIAN AND BENEFICIARY EDU-
23 CATION.—During 2006, the Secretary shall establish
24 a program to educate billing units under this part
25 and individuals enrolled under this part about the

1 value-based purchasing program under this sub-
2 section, including information regarding financial in-
3 centives for reporting information on Q & E meas-
4 ures and, beginning in 2009, financial incentives
5 based on performance on such measures.

6 “(8) ANNUAL REPORT ON GROWTH IN VOLUME
7 OF PHYSICIANS’ SERVICES.—

8 “(A) IN GENERAL.—The Secretary shall
9 report to the Medicare Payment Advisory Com-
10 mission and Congress by April 1 of each year
11 (beginning with 2006) information on the
12 growth in volume of services per enrollee and
13 growth in expenditures per enrollee, based upon
14 services and expenditures for which payment is
15 based, or related to, the fee schedule established
16 under this section.

17 “(B) DETAILS.—The information under
18 subparagraph (A) shall—

19 “(i) be disaggregated by type of serv-
20 ice, by geographic area, and by specialty of
21 physicians (or, if applicable, of non-physi-
22 cian practitioners or suppliers);

23 “(ii) distinguish between growth in ex-
24 penditures due to price change versus vol-
25 ume change and intensity change; and

1 “(iii) identify types of service or geo-
2 graphic areas where changes in volume or
3 expenditures are inappropriate or unjusti-
4 fied, taking into account clinical outcomes.

5 “(C) RECOMMENDATIONS.—Each such re-
6 port shall include recommendations to respond
7 to inappropriate growth in service volume. Such
8 recommendations may include regulatory or leg-
9 islative changes, or both.

10 “(D) MEDPAC RESPONSE.—The Medicare
11 Payment Advisory Committee shall review each
12 report submitted under this paragraph, includ-
13 ing recommendations included under subpara-
14 graph (C). The Commission shall include in its
15 report to Congress in June following such re-
16 port an analysis of the Secretary’s findings and
17 recommendations.

18 “(9) EVALUATION; REPORT.—

19 “(A) EVALUATION.—The Secretary shall
20 provide for an evaluation of the operation of
21 this subsection during the 5-year period in
22 which this subsection is first applied. Such eval-
23 uation shall review the impact of this subsection
24 on improving the quality and efficiency of serv-

1 ices and on access to such services and on the
2 fairness of its implementation.

3 “(B) REPORT.—The Secretary shall sub-
4 mit to Congress a report on such evaluation by
5 not later than September 30, 2011.

6 “(10) WAIVER OF ADMINISTRATIVE AND JUDI-
7 CIAL REVIEW.—There shall be no administrative or
8 judicial review under section 1869 or otherwise of—

9 “(A) the selection of Q & E measures
10 under paragraphs (1) and (2);

11 “(B) the development and computation of
12 ratings under paragraph (3)(A), standards and
13 thresholds under paragraph (5)(D), and the ap-
14 plication of such standards and thresholds
15 under paragraphs (3)(B), (5)(B), and (5)(C);
16 and

17 “(C) the definition of peers and new billing
18 units under this subsection.”.

19 (c) ENDING APPLICATION OF SUSTAINABLE GROWTH
20 RATE (SGR).—Section 1848(f)(1)(B) of such Act (42
21 U.S.C. 1395w–4(f)(1)(B)) is amended by inserting “(and
22 before 2005)” after “each succeeding year”.

23 (d) CONFORMING MEDPAC DUTIES.—Section
24 1805(b)(2) of such Act (42 U.S.C. 1395b–6(b)(2)) is

1 amended by adding at the end the following new subpara-
2 graph:

3 “(D) REVIEW OF REPORT ON GROWTH IN
4 PHYSICIAN SERVICES.—Specifically, under sec-
5 tion 1848(k)(8)(D), the Commission shall re-
6 view and make recommendations concerning the
7 Secretary’s report on the growth of physicians’
8 services under section 1848.”.

○